

**SERIAL 10110 IGA COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES DELL)**

**DATE OF LAST REVISION: February 04, 2011 CONTRACT END DATE: December 31, 2013**

**CONTRACT PERIOD THROUGH DECEMBER 31, 2013**

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES (DELL)**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **December 15 2010**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

---

Wes Baysinger, Chief Procurement Officer  
Materials Management

BW/mm  
Attach

Copy to: Materials Management  
Jack Coffin, Office of Enterprise Technology

(Please remove Serial 09094-IGA from your contract notebooks)



## CONTRACT PURSUANT TO RFP

**SERIAL 10110-IGA**

This Contract is entered into this 15<sup>th</sup> day of December, 2010 by and between Maricopa County ("County" or "Customer"), a political subdivision of the State of Arizona, and Dell Marketing L.P. a Texas limited partnership ("Contractor" or "Dell") for the purchase of COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES.

### 1.0 CONTRACT TERM:

- 1.1 This Contract is for a term of three (3) years, beginning on the 15<sup>th</sup> day of December, 2010 and ending the 31<sup>st</sup> day of December, 2013.
- 1.2 The County may, at its option and with the agreement of the Contractor, renew the term of this Contract for additional terms up to a maximum of **eight (8) months** ~~two (2) years~~, (or with the agreement of the Contractor, extend the contract on a month-to-month basis for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least thirty (30) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

### 2.0 PAYMENTS PROVISIONS:

- 2.1 Payment of Invoice. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the County per section 6.5 of any changes to that address. Payment shall be made within 30 days following receipt of an invoice. The invoice date will not be earlier than the shipment date from Dell's facility for the Products invoiced. The County is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate County department. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. In the event an order is shipped incomplete (partial), the County shall pay for each shipment as invoiced by the Contractor unless the County has clearly specified "No Partial Shipments" on each Purchase Order. County will reimburse Dell for all actual, reasonable, documented out-of-pocket expenses, including travel expenses that Dell incurs at County's request per Exhibit C. For invoices not paid within thirty days of the invoice date, Dell shall have all rights and remedies available for payment default and interest as set forth in the Arizona Revised §35-342 and 11- 622.
- 2.2 Procurement Card. The County may determine to use a MasterCard Procurement Card, to place and make payment for orders under the Contract. Payments may be made via the County's "Procurement Card" at the time of order placement only.

- 2.3 Electronic Funds Transfers. Payment shall be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program, if Contractor so elects. This is an Electronic Funds Transfer (EFT) process. After Award the Contractor shall fill out an EFT Enrollment form (to be provided by the Procurement Officer) or as located on the County Department of Finance Website as a fillable PDF document ([www.maricopa.gov/finance/](http://www.maricopa.gov/finance/)).
- 2.4 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

**3.0 PRICES.**

- 3.1 The prices for Products are Dell's then-current public retail prices less the County's applicable discount as specified in Exhibit A. Dell reserves the right to change retail prices at any time for any reason. Such prices are subject to shortages in materials, increases in the cost of manufacturing materials or components or other factors beyond the reasonable control of Dell. The prices charged for Services purchased under this Agreement will be Dell's then current charges for such Services as set forth on Dell's quotation or the amount set forth on the relevant Statement of Work ("SOW") relating to such Services.
- 3.2 The County shall pay the lower of the prices contained in this Contract, Promotional Price, or negotiated price at the time of order. Dell shall not sell Products or Services to the County at prices higher than those awarded via this Contract. In instances where this Provision is applied, this Contract shall be referenced in the Supplier's invoice.
- 3.3 Acceptance. County shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the County has accepted the Products or Services. The County shall notify the Contractor within ten (10) business days of non-acceptance of a product or service; otherwise the Products or Services shall be deemed accepted.
- 3.4 Payment of Taxes. Dell's prices do not include, and the County is not responsible for paying freight charges, insurance. However, title and risk of loss to products will pass to County upon delivery to County designated receiving point. Except for Dell's franchise taxes and taxes on Dell's net income, the County is responsible for any sales and all other taxes associated with the transaction, and the taxes will be shown on Dell's invoice. If County provides Dell a valid tax exemption certificate, Dell will not invoice County for the affected taxes. The invoices shall clearly indicate what items are subject to Transaction Privilege Tax (TPT) or Use Tax and what is not.
- 3.5 The Contractor's Rights. In the event this Contract expires or is terminated for any reason, the County shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.
- 3.6 Invoices: The Contractor shall submit an electronic detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:
- Company name, address and contact
  - County bill-to name and contact information
  - Contract serial number
  - County purchase order number
  - Invoice number and date
  - Payment terms
  - Date of service or delivery
  - Quantity
  - Contract Item number(s)
  - Description of service provided

- Pricing per unit of service
- Freight (if applicable)
- Extended price
- Total Amount Due

Problems regarding billing or invoicing shall be directed to the County as listed on the Purchase Order.

#### **4.0 AVAILABILITY OF FUNDS:**

- 4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.
- 4.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for products ordered or services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

#### **5.0 DUTIES:**

- 5.1 The Contractor shall perform all duties stated in Exhibit B, or as otherwise directed in writing as agreed by both parties.
- 5.2 During the Contract term, County may provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

#### **6.0 TERMS and CONDITIONS:**

##### **6.1 INDEMNIFICATION:**

- 6.1.1 The Contractor to the fullest extent permitted by law, shall hold the County and its agents, representatives, officers, directors, officials, an employees harmless and shall indemnify the County and its agents, representatives, officers, directors, officials, an employees against any and all third party claims, suits, actions, liabilities and costs of any kind, including reasonable attorney's fees for acts, omissions, mistakes or malfeasance, claim, loss, or error directly arising from the performance, negligent or willful acts or omissions of the Contractor, its agents, officers, employees or subcontractors.
- 6.1.2 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, DELL AND COUNTY EACH EXPRESSLY AGREE AND UNDERSTAND THAT THE OTHER PARTY WILL NOT HAVE ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES UNDER THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THEIR POSSIBILITY. THIS LIMITATION OF LIABILITY APPLIES BOTH TO PRODUCTS AND SERVICES COUNTY PURCHASES UNDER THIS AGREEMENT. DELL'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY EVENT OR SERIES OF CONNECTED EVENTS OCCURRING IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF ONE MILLION DOLLARS (\$1,000,000) OR THE U.S. DOLLAR EQUIVALENT OF THE TOTAL DOLLAR

AMOUNT OF PRODUCTS AND SERVICES PURCHASED BY COUNTY PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE DELL IS NOTIFIED BY COUNTY OF ANY CLAIM OF LIABILITY, EXCEPT WHERE LOCAL LAW, IF SUCH LOCAL LAW IS FOUND TO APPLY TO THIS AGREEMENT, PROHIBITS ANY SUCH LIMITATION. IN THE EVENT THE LAW OF ANY JURISDICTION WHICH APPLIES TO THIS AGREEMENT PROHIBITS IN ANY PART ANY LIMITATION IN THIS PARAGRAPH, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE MODIFIED, WITHOUT FURTHER ACTION OF EITHER PARTY, SO AS TO BROADLY APPLY TO THE MAXIMUM EFFECT ALLOWED BY GOVERNING LAWS.

6.1.3 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

6.1.4 The scope of this indemnification does not extend to the sole negligence of County.

**6.2 INSURANCE REQUIREMENTS:**

6.2.1 Contractor, at Contactor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County.

6.2.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, constitute a material breach of this Contract.

6.2.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

6.2.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

6.2.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contactor shall be solely responsible for the deductible and/or self-insured retention

6.2.6 County reserves the right to request and to receive, within 10 working days, any or all of the herein required insurance certificates. County shall not be obligated to review certificates of insurance and/or endorsements or to advise Contractor of any deficiencies in such certificates of insurance and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

6.2.7 The commercial general liability and automobile liability insurance policies required by this Contract, shall add County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

6.2.8 The commercial general liability and automobile liability policies required hereunder, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

**6.2.9 Commercial General Liability.**

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

**6.2.10 Automobile Liability.**

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

**6.2.11 Workers' Compensation.**

6.2.11.1 Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee, and \$1,000,000 disease policy limit.

6.2.11.2 Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

**6.2.12 Certificates of Insurance.**

6.2.12.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND UNDERSTANDS THAT FAILURE TO MAINTAIN INSURANCE THROUGHOUT THE CONTRACT WILL RESULT IN CANCELLATION OF THIS CONTRACT.

6.2.12.2 In the event any insurance policy (ies) required by this Contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

6.2.12.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days after the expiration date.

6.2.13 Cancellation and Expiration Notice.

Contractor's insurers shall endeavor to provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal listed herein.

6.3 WARRANTY OF SERVICES:

**Limited Warranty.** DELL WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, DELL (INCLUDING ITS AFFILIATES, SUBCONTRACTORS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE "DELL PARTY(IES)") MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES; ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES; OR ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION THE DELL PARTIES MAY MAKE.

6.4 INTERNET ORDERING CAPABILITY:

The County intends, at its option, to use the Internet to communicate and to place orders under this Contract.

6.5 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:  
Maricopa County  
Department of Materials Management  
Attn: Director of Purchasing  
320 West Lincoln Street  
Phoenix, Arizona 85003-2494

For Contractor:  
Dell Marketing L.P.  
Attention: Public Contracts  
Stephanie G. Miller  
One Dell Way, RR8-8708  
Round Rock, TX 78682  
Email: Stephanie\_G\_Miller@dell.com

6.6 REQUIREMENTS CONTRACT:

6.6.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.

6.6.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of

product or performance of services prior to issuance of a purchase order or notice to proceed.

6.6.3 Purchase orders will be cancelled in writing.

**6.7 TERMINATION FOR CONVENIENCE:**

The County reserves the right to terminate the Contract in whole or in part at any time upon thirty days written notice. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

**6.8 TERMINATION FOR DEFAULT:**

6.8.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

6.8.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

6.8.3 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**6.9 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

**6.10 FORCE MAJEURE:**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, industry-wide constraints or other catastrophes beyond the reasonable control (each a "Force Majeure event") of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party not performing due to a Force Majeure event under this provision must provide the other party prompt written notice of the Force Majeure event and take all necessary steps to bring about performance as soon as practicable.



**6.11 ENFORCEMENT OF CONTRACT/WAIVERS**

- 6.11.1 No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- 6.11.2 Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- 6.11.3 Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

**6.12 ADDITIONS/DELETIONS OF SERVICE:**

The County reserves the right to add and/or delete products and/or services provided under this Contract. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

**6.13 RELATIONSHIPS:**

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the District and the Contractor.

**6.14 SUBCONTRACTING:**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the approval of the County. However, the Contractor shall remain solely responsible for the performance of this Contract.

**6.15 AMENDMENTS:**

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

**6.16 RETENTION OF RECORDS:**

The Contractor agrees to retain all invoices relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said invoices.

**6.17 AUDIT DISALLOWANCES:**

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

**6.18 ALTERNATIVE DISPUTE RESOLUTION:**

County and Contractor will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to this Agreement, Contractor's advertising, or any related purchase (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or equity.

**6.19 SEVERABILITY:**

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

**6.20 INTEGRATION:**

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

**6.21 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:**

6.21.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. I-9 forms are available for download at [USCIS.GOV](https://uscis.gov).

6.21.2 The County retains the legal right to inspect contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 6.21.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract and may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

**6.22 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:**

- 6.22.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.
- 6.22.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or department of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

**6.23 CONTRACTOR LICENSE REQUIREMENT:**

- 6.23.1 The Respondent shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Respondent shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Materials Management and the using agency of any and all changes concerning permits, insurance or licenses.
- 6.23.2 Respondents furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. A Respondent is not relieved of its obligation to possess the required licenses by subcontracting of the labor portion of the Contract. Respondents are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, at (602) 542-1502 to ascertain licensing requirements for a particular contract. Respondents shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

**6.24 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

- 6.24.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:
  - 6.24.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
  - 6.24.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

6.24.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

6.24.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

6.24.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contact.

The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

**6.25 GOVERNING LAW:**

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

**6.26 INCORPORATION OF DOCUMENTS:**

The following are to be attached to and made part of this Contract:

6.26.1 Exhibit A, Pricing;

6.26.2 Exhibit B, Scope of Work;

6.26.3 Exhibit C, Contractor Travel and Per Diem Policy

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

**CONTRACTOR:**

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

Lesley Braun, Senior Contracts Consultant  
PRINTED NAME AND TITLE

Dell Marketing LP, One Dell Way, Round Rock, TX 78682  
ADDRESS

11/23/2010  
DATE

**MARICOPA COUNTY:**

  
\_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

DEC 22 2010  
DATE

**ATTESTED:**

  
\_\_\_\_\_  
DEPUTY CLERK OF THE BOARD 121510

DEC 22 2010  
DATE

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
LEGAL COUNSEL

Dec 15 2010  
DATE

## EXHIBIT A PRICING

SERIAL: 10110-IGA	
NIGP CODE: 2045303	
RESPONDENT NAME:	<u>Dell Marketing LP</u>
VENDOR NUMBER :	<u>W000002566</u>
ADDRESS:	<u>One Dell Way</u>
	<u>Round Rock, Texas 78682</u>
P.O. ADDRESS:	<u>One Dell Way 8711</u>
TELEPHONE NUMBER:	<u>1 512 513 9382</u>
FACSIMILY NUMBER:	<u>866-501-8291</u>
WEB SITE:	<u><a href="http://www.dell.com">www.dell.com</a></u>
REPRESENTATIVE:	<u>Paul Shafer</u>
REPRESENTATIVE E-MAIL:	<u><a href="mailto:Paul_Shafer@dell.com">Paul_Shafer@dell.com</a></u>

	<u>YES</u>	<u>NO</u>	<u>REBATE</u>
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT:	[ ]	X	
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	X*	[ ]	
*At the time of purchase			
WILL OFFER REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD:	[ ]	X	% <u>          </u>
<small>(Payment shall be made within 48 hours of utilizing the Purchasing Card)</small>			

PAYMENT TERMS: RESPONDENT IS REQUIRED TO PICK ONE OF THE FOLLOWING.

FAILURE TO CHOOSE PAYMENT TERMS WILL RESULT IN A DEFAULT TO NET 30 DAYS.

[ ] NET 10 DAYS	[ ] NET 45 DAYS	[ ] 1% 10 DAYS NET 30 DAYS
[ ] NET 15 DAYS	[ ] NET 60 DAYS	[ ] 2% 30 DAYS NET 31 DAYS
[ ] NET 20 DAYS	[ ] NET 90 DAYS	[ ] 1% 30 DAYS NET 31 DAYS
X NET 30 DAYS	[ ] 2% 10 DAYS NET 30 DAYS	[ ] 5% 30 DAYS NET 31 DAYS

[This space intentionally left blank]

## EXHIBIT A-1

### 1.0 Discount Category List

Dell provides discounted pricing to customers based on a number of variables such as, Customer's annual purchase amount; the geographic location(s) in which the customer is located; the selection of product lines from which the customer orders; the procurement process chosen by the customer and other circumstances arising out of the customer relationship. Dell's standard pricing policy for Dell-branded systems, which include both hardware and services in one discounted price, allocates the discount off list price applicable to the service portion of the system to be equal to the overall calculated percentage discount off list price on the entire system.

Customer's current discount percentages that are applicable to Products purchased by Customer are listed by Product Category below:

Category	Current Product Classifications	
A	Performance PowerEdge, PowerVault, PowerApp, Workstations, OptiPlex and Latitude; Peripherals; Dell   EMC; Customer Kits on Dell Stocked Accessories and Options	10.50%
H	Value Latitude, OptiPlex, Workstation; Future Products to be Determined.	3.50%
M	Dell Software and Peripherals – Mainstream	5.00%
O	Directline Service; 4-Hr On-Site Critical Care Plus; Business Care Plus On-Site Service (all years)	13.50%
S	Selected Promotional Offers; Consumer Inspiron; Consumer Latitude; PowerEdge SC; Dell EMC; PS5000	2.00%
W	Selected Discountable Dimension Products	0.00%
X	Third Party Software & Peripherals Designated as Non-Discountable at any time	0.00%
Z	Items Designated as Non-Discountable at any time; Dimension; Selected PowerEdge and Service	0.00%

Dell reserves the right to provide Customer special pricing on any given opportunity that may exceed the minimum discounts offered. Dell's ability to special price and provide the greatest value to Customer will depend on volume commitment, standardization practice, online purchasing practices, delivery requirements and other related factors. Dell's special pricing practice shall not in any way impact the discounts offered in the above matrix unless otherwise agreed upon in writing between Dell and Customer.

The discounts set out in this Attachment are subject to change: (i) in the event of structural or significant changes in the way Dell develops its list pricing; (ii) if key vendors to Dell significantly change their pricing structure to Dell; or (iii) if Customer does not meet its obligations under the Agreement. These discounts may not be aggregated or combined with any other discounts.

Any product category not listed herein shall be deemed a non-discountable product or service offering and receive zero percent contractual discount. Additional discounting may be available on a case-by-case basis.

**Discounts Not Retroactive:** If the Effective Date is prior to the date on which this CONTRACT has been mutually executed by the Customer and Dell, Customer understands that the discounts will not apply retroactively to any Products ordered before the date of mutual execution.

## **2.0 Special Pricing Structure for Fixed Configurations**

In addition to the Discount pricing identified above, Dell and Customer will also mutually agree on pricing for Standard Configurations and upload them to the Customer's Premier Page. The Dell-branded systems mutually agreed to by Customer and Dell as standard configurations and described in the Dell quotes below ("Standard Configurations") will be made available to Customer for its internal purchases from Dell in the United States at the mutually agreed to prices. Standard configurations may be changed from time to time with the mutual written agreement of Customer and Dell, and such changes will not require the amendment of this Agreement.

If a Standard Configuration reaches the end of its life cycle ("EOL"), Dell will work with Customer to develop a plan for a smooth transition to a comparably configured replacement Standard Configuration at a point in the product life cycle where the price of the new Standard Configuration is comparable to the price of the Standard Configuration that has reached EOL.

The prices for the Standard Configurations agreed to are subject to change: (i) in the event of structural or significant changes in the way Dell develops its list pricing; (ii) if key vendors to Dell significantly change their pricing structure to Dell; or (iii) if Customer does not meet its obligations under the Agreement.

**THIS EXHIBIT IS A PART OF AND INCORPORATED INTO THE  
CONTRACT FOR ALL PURPOSES**



## **EXHIBIT B**

### **SCOPE OF WORK**

#### **1.0 INTRODUCTION AND SCOPE**

As of the date of contract term, the ("Effective Date"), this CONTRACT, including attachments and the terms and conditions of our service programs, if applicable, the ("CONTRACT") governs the purchase by **Maricopa County, AZ**, ("Customer") and sale by **Dell Marketing, L.P.** ("Dell") of computer hardware and related products, including software licensing arrangements specified in this CONTRACT ("Products") and services provided by Dell, enumerated in the standard service descriptions set forth at [http://www.dell.com/us/en/gen/services/service\\_service\\_contracts.htm](http://www.dell.com/us/en/gen/services/service_service_contracts.htm) ("Services"). "Customer" shall include any affiliate of Customer who places an order hereunder, and "Dell" shall include any affiliate of Dell with whom an order is placed. Purchases of Products and Services in this CONTRACT shall be for Customer's internal use only and not for resale purposes.

#### **2.0 QUOTES, ORDERING AND PAYMENT**

- 2.1 **Obtaining Quotes.** Customer may request a quote online from a web-site personalized for Customer, if available, or directly from Customer's Dell sales representative. Dell's written quotes are binding on Dell to the extent indicated therein or as otherwise agreed by the parties.
- 2.2 **Ordering On-line.** If Customer orders on-line, Dell will issue to Customer user names and passwords the ("Purchase Codes"). By accepting and using the Purchase Codes, Customer acknowledges the validity of an electronic order, which shall be deemed to be a writing for all purposes hereunder, and agrees to be responsible for full payment of any Products or Services ordered using Customer's Purchase Codes. Customer is responsible for keeping the Purchase Codes confidential and controlling their use.
- 2.3 **Orders.** All orders must specify Dell's quotation (if any), and reference the Product model number, Services, options and quantities for each Product or Service ordered, requested shipment dates and shipping and invoice addresses. Customer agrees to place orders through the use of electronic online ordering, unless otherwise agreed by Customer and Dell, in which case such orders may be placed in writing, by telephone or by facsimile transmission. Telephone orders must be confirmed in writing or by facsimile. All orders are subject to acceptance by Dell. Customer may change or cancel an order up until the time Dell begins manufacturing the Products. Neither Dell nor Customer is bound by any terms and conditions imprinted on or embedded in orders, order acknowledgments or other communications between the parties relating to orders.
- 2.4 Reserved
- 2.5 **Prices.** The prices for Products are Dell's then-current public retail prices less Customer's applicable discount as specified in the Attachment. Dell reserves the right to change retail prices at any time for any reason. Such prices are subject to shortages in materials, increases in the cost of manufacturing materials or components or other factors beyond the reasonable control of Dell. The prices charged for Services purchased under this CONTRACT will be Dell's then current charges for such Services as set forth on Dell's quotation or the amount set forth on the relevant Statement of Work ("SOW") relating to such Services.
- 2.6 **Dell Standard Pricing Discount Policy.** Unless the customer and Dell have agreed to a different discount, Dell's standard pricing policy for Dell-branded systems, which include both hardware and services in one discounted price, allocates the discount off list price applicable to the service portion of the system to be equal to the overall calculated percentage discount off list price on the entire system.
- 2.7 **Additional Fees; Taxes.** Dell's prices do not include, and Customer is not responsible for paying freight charges, insurance. Except for Dell's franchise taxes and taxes on Dell's net income, Customer is responsible for any sales and all other taxes associated with the transaction, and the taxes will be shown on Dell's invoice. If Customer provides Dell a valid tax exemption certificate, Dell will not invoice Customer for the affected taxes.
- 2.8 **Invoicing and Payment.** Customer's payment terms will be net thirty (30) days from the date of invoice, subject to continuing credit approval by Dell. The invoice date will not be earlier than the shipment date from Dell's facility for the Products invoiced. Additional charges may apply if Customer requests Services that are performed outside contracted hours or are beyond the normal coverage for the particular Service. Customer will reimburse Dell for all actual, reasonable, documented out-of-pocket expenses, including travel expenses that Dell incurs at Customer's request. In addition, Dell may, without waiving any other rights or remedies to which it may be entitled, refuse to ship ordered Products and may seek collection from Customer of any unpaid amounts, including reasonable legal fees and costs of collection.
- 2.9 **Shipping; Delivery; Title.** When Dell accepts an order, Dell will provide Customer with an estimated ship date or dates for all Products ordered. Title to the Products, except for software that is subject to licensing CONTRACTs (see "Software Licensing" below), passes from Dell to Customer when Dell ships the Products from its manufacturing location. If Customer is not satisfied with the Products, it has the right to return them under the then current "Total Satisfaction" return policies described below.

Customer may select from one of the two following shipping options: (1) Customer may direct Dell to ship Products

using Dell's designated carrier or (2) Customer may designate another carrier. If Customer directs Dell to ship using Dell's designated carrier, Dell will invoice Customer for shipping and handling costs, and Dell will bear the risk of loss of or any damage to the Products during shipping. If Customer directs Dell to ship using Customer's designated carrier, Dell will ship Products via Customer's carrier, freight collect or freight prepaid by Customer, and Customer will bear the risk of loss of or any damage to the Products during shipping.

### **3.0 DELL PRODUCTS, THIRD PARTY PRODUCTS AND RETURN POLICY**

- 3.1 **Dell-Branded Products.** "Dell-branded" means computer hardware or software products that are marked with the "Dell" brand, including all standard components thereof, but does not include any of the following items: (i) software, sound cards, speakers, external devices, accessories or parts added to the Dell-branded hardware products after they are shipped from Dell; (ii) accessories or parts added to the Dell-branded hardware products through Dell's Custom Factory Integration Services at Customer's request; (iii) accessories or parts that are not installed in the Dell factory; (iv) Third Party Software and Peripheral products; or (v) monitors, keyboards and mice, to the extent that they are not included in Dell's products listed online.
- 3.2 **Third Party Products.** "Third party products" means any third-party hardware, services or software. Some manufacturers' warranties or service contract terms and conditions for Third Party Products may become void if Dell or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). **DELL DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES.** Except as agreed to in writing between Customer and Dell, Third Party Products shall be exclusively subject to terms and conditions between the third party and Customer. Dell shall have no liability for Third Party Products and Customer shall look exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products.
- 3.3 **Product Specification.** Dell may revise or discontinue Product offerings at any time without prior notice to Customer. A change in a Product may occur between the time that Customer orders a Product and the time that Dell ships the Product. As a result, Products shipped may display minor differences from the Products Customer ordered, but they will meet or exceed all material specifications of the Products Customer ordered. In addition, Dell will meet with Customer quarterly to discuss product roadmaps on any configurations for which Customer receives special pricing.
- 3.4 **Software Licensing.** Dell may distribute software, including software licensed by third party software manufacturers or marketers, with the Products. All software distributed with the Products is subject to the license CONTRACT provided with the software and is subject to third party warranties, if any. Customer agrees that Customer and all of Customer's end-users of the software are bound by, and will abide by, all such software licensing CONTRACTS.
- 3.5 **Return Policy.** Under Dell's Return Policy, as in effect from time to time, Dell-branded Products may be returned to Dell for a refund of the purchase price if already paid. A Credit Return Authorization Number must be requested by Customer and issued by Dell before Products are returned. The returned Products must be shipped to Dell in their original packaging, shipping charges prepaid. Risk of loss or damage during shipment to Dell is the responsibility of Customer. Returned Products must be in as new condition, and all of the manuals, diskettes, power cords and other items included with Products must be returned.

### **4.0 LIMITED WARRANTIES**

- 4.1 **Limited Warranty.** Dell-branded Products will conform to the Dell specifications current when the Product is shipped and will be free from defects in materials and workmanship for a period of up to one or three years, depending upon a variety of factors, including the Product purchased and where the Product is shipped and used. Unless the parties otherwise agree in writing, notebook batteries that are included with Dell-branded Products will carry a one (1) year limited warranty. Dell shall provide to Customer a description of the available warranty for any particular Product in any location at Customer's request. The limited warranty period for Products begins on the date of invoice. Services provided by Dell shall be performed in a good and workman like manner.
- 4.2 **No Warranty of Function or for a Particular Use.** Dell does not warrant that its Products, when used, will function in any specific configuration that includes hardware or software not provided by Dell or will function or can be used to produce a particular result, even if the specific configuration or the result has been discussed with Dell.
- 4.3 **Software and Third-Party Products.**
  - 4.3.1 **Warranty.** Dell does not warrant third-party products. Any warranty provided on third-party software or a Dell Software and Peripherals product is provided by the publisher or original manufacturer and may vary from product to product.
  - 4.3.2 **License Agreement.** All software, including Microsoft software, is provided subject to the license agreement that is part of the package. Dell has the right to provide such software to Customer. Each Buyer purchasing under this Agreement agrees that it will be bound by the license agreement once the package is opened or the seal is broken.

- 4.4 **High Risk Applications Disclaimer.** Dell has not tested or certified its Products, Services or Deliverables for use in high risk applications including medical life support, medical device, direct physical patient contact, water treatment, nuclear facilities, weapon systems, mass and air transportation control, flammable environments, or any other potentially life critical uses. Customer understands and agrees that Dell makes no assurances or warranties that the Products, Services or Deliverables are suitable for any high-risk uses.
- 4.5 **Other Exclusions.** This warranty does not cover damage due to external causes, including accident, abuse, misuse, problems with electrical power, service (including installation or de-installation) not performed or authorized by Dell, usage not in accordance with Product instructions, normal wear and tear, and problems caused by use of parts and components not supplied by Dell. The warranty does not cover accessories or parts added to a Dell system after the system is shipped from Dell or non-Dell-branded accessories or parts added to a Dell system through CFI Services. DELL MAY REVISE ITS LIMITED WARRANTIES FROM TIME TO TIME BUT ANY SUCH CHANGE WILL NOT AFFECT PRODUCTS ORDERED BY CUSTOMER PRIOR TO THE DATE OF SUCH CHANGE. IF CUSTOMER HAS NOT TIMELY PAID DELL FOR PRODUCTS OR SERVICES, THE WARRANTY(S) FOR THE UNPAID PRODUCTS SHALL BE VOID. ANY WARRANTY PROVIDED ON SOFTWARE OR A THIRD PARTY SOFTWARE OR PERIPHERAL PRODUCT IS PROVIDED BY THE PUBLISHER OR ORIGINAL MANUFACTURER AND MAY VARY FROM PRODUCT TO PRODUCT. DELL DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE PRODUCTS AND SERVICES.
- 4.6 **Limitation of Liability.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT, DELL AND CUSTOMER EACH EXPRESSLY AGREE AND UNDERSTAND THAT THE OTHER PARTY WILL NOT HAVE ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES UNDER THIS CONTRACT, EVEN IF THE PARTY HAS BEEN ADVISED OF THEIR POSSIBILITY. THIS LIMITATION OF LIABILITY APPLIES BOTH TO PRODUCTS AND SERVICES CUSTOMER PURCHASES UNDER THIS CONTRACT. DELL'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY EVENT OR SERIES OF CONNECTED EVENTS OCCURRING IN CONNECTION WITH THIS CONTRACT SHALL NOT EXCEED THE LESSER OF ONE MILLION DOLLARS (\$1,000,000) OR THE U.S. DOLLAR EQUIVALENT OF THE TOTAL DOLLAR AMOUNT OF PRODUCTS AND SERVICES PURCHASED BY CUSTOMER PURSUANT TO THIS CONTRACT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE DELL IS NOTIFIED BY CUSTOMER OF ANY CLAIM OF LIABILITY, EXCEPT WHERE LOCAL LAW, IF SUCH LOCAL LAW IS FOUND TO APPLY TO THIS CONTRACT, PROHIBITS ANY SUCH LIMITATION. IN THE EVENT THE LAW OF ANY JURISDICTION WHICH APPLIES TO THIS CONTRACT PROHIBITS IN ANY PART ANY LIMITATION IN THIS PARAGRAPH, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE MODIFIED, WITHOUT FURTHER ACTION OF EITHER PARTY, SO AS TO BROADLY APPLY TO THE MAXIMUM EFFECT ALLOWED BY GOVERNING LAWS.

## **5.0 SERVICE OPTIONS**

Dell will provide Services in accordance with the Attachment and/or any mutually agreed Statement of Work (SOW) as selected by Customer. Certain levels of service may not be available in some remote areas. In the event of a conflict between the terms of this CONTRACT (including Attachment) and a SOW, the terms of these documents will be followed according to the following order of preference: (1) the SOW, (2) any attachment to the SOW, (3) Attachment and (4) the CONTRACT. For any Products purchased before Customer purchases the Services, Dell reserves the right to inspect such Products prior to agreeing to provide the Services. Dell reserves the right to repair or replace any system that displays a malfunction or other problem.

## **6.0 ADDITIONAL OFFERINGS**

Dell also provides the following options to Customer in accordance with Dell's terms and conditions in effect at the time of purchase:

- 6.1 **Custom Factory Integration Services.** Customer may purchase factory integration services, including installation of Customer's custom software image, asset tagging, hardware integration or other consulting or system integration services ("CFI Services"), upon the terms and conditions set forth in Attachment.
- 6.2 **Employee Purchase Program.** Where allowed by applicable law, Customer may extend to its employees the right to purchase selected configurations of Dell Products at a discount. Customer's employees' purchases will be governed by Dell's standard terms and conditions of sale for individuals in effect at the time of purchase, and not this CONTRACT.
- 6.3 **Other Programs or Services.** This CONTRACT covers only those Services and offerings specifically agreed to by and between Dell and Customer. Services provided hereunder beyond the descriptions or CONTRACTs set forth herein shall be subject to agreed terms and conditions, fees and/or charges.

## 7.0 OUR RELATIONSHIP

- 7.1 **Indemnification for Infringement of Third Party Intellectual Property Rights.** Dell will defend Customer from any claim, demand, cause of action, debt or liability (including attorneys' fees and expenses) ("Claim") that Dell-branded Products infringe, misappropriate or otherwise violate any Intellectual Property (patent, copyright or trademark) rights of a third party ("Indemnified Claim"). Dell will not indemnify Customer or bear any responsibility for any Claim, in whole or part, upon Customer's unauthorized modification of the Products or from any combination, operation or use of the Products with other products or services. Dell's duty to indemnify under this section is contingent upon Dell receiving prompt notice of an Indemnified Claim and Dell's right to solely control resolution of the Indemnified Claim. Except for duty to defend above, Customer's sole remedy for an Indemnified Claim is as follows: Dell will, at its expense and in its discretion, either (a) resolve the Indemnified Claim in a way that permits continued ownership and use of the affected Product; (b) provide a comparable non-infringing replacement Product at no cost to Customer; or (c) accept return of the Product freight collect and provide a reasonably depreciated refund for the Product. This section is an exclusive statement of Dell's liability and responsibility for Indemnified Claims, and nothing in this CONTRACT or elsewhere will obligate Dell to provide any greater indemnity to Customer.
- 7.2 **Indemnity from Customer to Dell.** To the extent permitted by law, Customer will indemnify Dell from any Claim: (a) that Customer's modifications of and/or additions to the Products infringe on, misappropriate or otherwise violate the Intellectual Property of a third party; (b) by Customer's end-users other than an Indemnified Claim described in "Dell's Indemnity for Infringement of Third Party Intellectual Property Rights" above; or (c) that the Products sold to Customer under this CONTRACT damage a third party to the extent such Claim is based on (1) Customer's misuse or abuse of the Products, negligence or breach of representations and warranties in this CONTRACT; (2) failure of Customer to abide by all applicable laws, rules, regulations and orders that affect the Products; or Customer's failure to obtain any necessary rights and licenses to permit Dell to perform its obligations under this CONTRACT. Customer's duty to indemnify, defend and hold harmless under this section is contingent upon Customer receiving prompt notice of any claim, demand, cause of action, debt or liability for which Customer must indemnify Dell and Customer's right to solely control the defense of all matters for which Customer is liable under this Section.
- 7.3 **Regulatory Compliance and Export.** Each party, at its own expense, will comply with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this CONTRACT. Each party will furnish to the other party any information required to enable the other party to comply with applicable laws and regulations related to the Products. Dell and Customer acknowledge that Products licensed or sold under this CONTRACT are subject to the export control laws and regulations of the United States or those of other countries in which they are used and agree to abide by those laws and regulations. Under U.S. laws and regulations, Products purchased under this CONTRACT may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. In addition, the products may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer and Dell agree to comply with all applicable export laws, regulations and orders. In addition, each party agrees to indemnify, defend and hold the other harmless from any claims, demands or causes of action against the other due to the indemnifying party's violation or alleged violation of the applicable export laws, regulations and orders.

## 8. MISCELLANEOUS ITEMS

- 8.1 **General Assignments and Assignment for Third Party Leasing.** Neither party may assign this CONTRACT without the express written consent of the other party, except that no consent shall be required for any assignments by Dell to its affiliates. Any proposed assignment by Customer of the right to place orders hereunder to a third party lessor shall be governed by Dell's then-current standard terms and conditions for assignment of such purchase rights. Dell retains the right to subcontract the Services provided under this CONTRACT. Notwithstanding anything to the contrary in this CONTRACT, Dell shall, without limitation, be permitted to assign or otherwise transfer any of its accounts receivable resulting from the sale of Products and Services to Customer pursuant to this CONTRACT.
- 8.2. **Non-performance by Customer.** If Customer materially breaches any of its obligations under this CONTRACT, including failing to pay for any Products or Services, Dell may discontinue providing service and technical support, reporting and other commitments set forth in this CONTRACT.
- 8.3 **Limitation Period.** Neither party may institute any action in any form arising out of this CONTRACT more than two (2) years after the cause of action has arisen, or in the case of nonpayment, more than two (2) years from the date of last payment.

**THIS EXHIBIT IS A PART OF AND INCORPORATED INTO THE CONTRACT FOR ALL PURPOSES**

**EXHIBITB-1****Services Terms and Conditions**

Should Customer purchase Services from Dell, the parties agree that the following terms and conditions shall apply and/or any mutually agreed Statement of Work:

**1.0 Services**

All services provided by Dell under this CONTRACT (the “**Services**”) will be described in one or more Service CONTRACTs. “**Service CONTRACTs**” are order forms or service contracts that incorporate the terms of this CONTRACT, including “Service Descriptions” available at [www.Dell.com/ServiceContracts](http://www.Dell.com/ServiceContracts), “Technical Specification Forms”, “Statements of Work”, and any other such mutually agreed upon document. The CONTRACT and each Service CONTRACT will be interpreted as a single CONTRACT, independent of each other Service CONTRACT, so that all of the provisions are given as full effect as possible. In no event will the description of Services under any Service CONTRACT be deemed by implication or otherwise to exclude any Services described in this CONTRACT or another Service CONTRACT.

In the event of a conflict between the terms of the CONTRACT and a Service CONTRACT, the terms of these documents will be interpreted according to the following order of precedence: (1) Service CONTRACTs and (2) the CONTRACT.

**2.0 Terms of Purchase**

**2.1 Prices.** The prices charged for Services purchased under this CONTRACT will be Dell’s “then-current” charges for such services in each geographic region or as quoted by Dell. Dell reserves the right to revise pricing if prices for Services are based upon written assumptions and those assumptions are determined inaccurate. If Customer and Dell are not able to reach CONTRACT on the revised pricing, Customer or Dell may terminate the applicable Service CONTRACT. All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes. If the Services are being performed on a time and materials basis, any estimates provided by Dell are for planning purposes only. Any required deposits are non-refundable.

**3.0 Third-Party Products & Warranties**

Except as otherwise specifically agreed to in a Service CONTRACT, Customer authorizes Dell (or otherwise obtains the rights for Dell) to copy, install and modify, when necessary and as required by the Service CONTRACT, all Third Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. Customer warrants to Dell that it has obtained any licenses, consents, regulatory certifications or approvals required to give Dell and its subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

**4.0 Proprietary Rights**

**4.1 Deliverables.** Except as otherwise specifically agreed to in a Service CONTRACT, Dell will retain exclusive ownership in all Deliverables created by Dell hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by Dell under this CONTRACT. Subject to payment in full for the applicable Services, Dell grants Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country(ies) in which Customer does business and solely for Customer’s internal use. “**Deliverables**” means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures and recommendations that are prepared by Dell or its subcontractors in the course of performing the Services.

**4.2 Tools & Software.** Dell will retain all intellectual property rights with respect to the processes, tools and software related to the Services. Any use by Customer, including the execution, reverse



engineering, decompilation, reproduction, modification, distribution, transmission, republication, display, transfer or performance, except as specifically permitted by Dell during the term of Services is prohibited

## **5.0 Software License Provided by Dell**

Customer use of Software in connection with the Services is pursuant to the terms accompanying the Software. “**Software**” includes software locally installed on Customer’s systems and software remotely accessed by Customer through the Internet or other means (including, but not limited to websites, Internet portals and “cloud-based” software services). In the absence of such terms, Customer use of Software is pursuant to the Dell Services License CONTRACT & Acceptable Use Policy (“**AUP**”) available at [www.Dell.com/AUP](http://www.Dell.com/AUP). By accessing, downloading, installing, activating or otherwise using such Software, Customer agrees to be bound by the terms of the AUP.

## **6.0 Customer Responsibilities**

It is the Customer’s responsibility to backup data on Customer’s system(s). Customer acknowledges that Dell’s performance and delivery of the Services are contingent upon: (A) Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, software, network and information for Services to be performed at Customer’s location, and (B) Customer’s timely decision-making, notification of relevant issues or information and granting of approvals or permissions. Customer will promptly obtain and provide to Dell any required licenses, approvals or consents necessary for Dell’s performance of the Services.

## **7.0 Support Services**

When Services consist of repair of Dell-branded systems, such Services shall be those repair services that are necessary because of any existing defect or a defect occurs in materials or workmanship in the system or in any system component covered by this CONTRACT. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included. Unless otherwise expressly provided in a Service CONTRACT, Services do not include repair of any system or system component which has been damaged as a result of: (A) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives), (B) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (C) the moving of the system from one geographic location or entity to another.

## **8.0 LIMITED WARRANTY & LIMITATION OF LIABILITY; HIGH-RISK DISCLAIMER**

**8.1 Limited Warranty.** DELL WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, DELL (INCLUDING ITS AFFILIATES, SUBCONTRACTORS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE “DELL PARTY(IES)”) MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES; ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES; OR ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION THE DELL PARTIES MAY MAKE.

**8.2 Limitation of Liability.** NEITHER THE DELL PARTIES NOR CUSTOMER WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY DELL. WHETHER DIRECT OR INDIRECT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING, (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS

OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, OR (E) SERVICES, DELL PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CUSTOMER. THE DELL PARTIES' AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ALL CLAIMS OF LIABILITY ARISING OUT OF, OR IN CONNECTION WITH ANY SERVICE PROVIDED PURSUANT TO THIS CONTRACT SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE (12) MONTH PERIOD.

EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, THE FEE FOR THE SERVICES PROVIDED HEREUNDER WOULD BE HIGHER.

- 8.3 High-Risk Application Disclaimer.** The Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.
- 8.4 Regulatory Requirements.** Dell is not responsible for determining if Third Party Products to be used in performance of the Services satisfy the local regulatory requirements of the country to which the products are to be shipped, nor shall Dell be obligated to perform any Services where the resulting products or software do not satisfy the local regulatory requirements.

**THIS EXHIBIT IS A PART OF AND INCORPORATED INTO THE  
VOLUME PURCHASE CONTRACT FOR ALL PURPOSES**

## EXHIBIT C

### MATERIALS MANAGEMENT CONTRACTOR TRAVEL AND PER DIEM POLICY

- 1.0 All contract-related travel plans and arrangements shall be prior-approved by the County Contract Administrator.
- 2.0 Lodging, per diem and incidental expenses incurred in performance of Maricopa County/Special District (County) contracts shall be reimbursed based on current U.S. General Services Administration (GSA) domestic per diem rates for Phoenix, Arizona. Contractors must access the following internet site to determine rates (no exceptions): [www.gsa.gov](http://www.gsa.gov)
  - 2.1 Additional incidental expenses (i.e., telephone, fax, internet and copying charges) shall not be reimbursed. They should be included in the contractor's hourly rate as an overhead charge.
  - 2.2 The County will not (under no circumstances) reimburse for Contractor guest lodging, per diem or incidentals.
- 3.0 Commercial air travel shall be reimbursed as follows:
  - 3.1 Coach airfare will be reimbursed by the County. Business class airfare may be allowed only when preapproved in writing by the County Contract Administrator as a result of the business need of the County when there is no lower fare available.
  - 3.2 The lowest direct flight airfare rate from the Contractors assigned duty post (pre-defined at the time of contract signing) will be reimbursed. Under no circumstances will the County reimburse for airfares related to transportation to or from an alternate site.
  - 3.3 The County will not (under no circumstances) reimburse for Contractor guest commercial air travel.
- 4.0 Rental vehicles may only be used if such use would result in an overall reduction in the total cost of the trip, not for the personal convenience of the traveler. Multiple vehicles for the same set of travelers for the same travel period will not be permitted without prior written approval by the County Contract Administrator.
  - 4.1 Purchase of comprehensive and collision liability insurance shall be at the expense of the contractor. The County will not reimburse contractor if the contractor chooses to purchase these coverage.
  - 4.2 Rental vehicles are restricted to sub-compact, compact or mid-size sedans unless a larger vehicle is necessary for cost efficiency due to the number of travelers. (NOTE: contractors shall obtain pre-approval in writing from the County Contract Administrator prior to rental of a larger vehicle.)
  - 4.3 County will reimburse for parking expenses if free, public parking is not available within a reasonable distance of the place of County business. All opportunities must be exhausted prior to securing parking that incurs costs for the County. Opportunities to be reviewed are the DASH; shuttles, etc. that can transport the contractor to and from County buildings with minimal costs.
  - 4.4 County will reimburse for the lowest rate, long-term uncovered (e.g. covered or enclosed parking will not be reimbursed) airport parking only if it is less expensive than shuttle service to and from the airport.
  - 4.5 The County will not (under no circumstances) reimburse the Contractor for guest vehicle rental(s) or other any transportation costs.



**SERIAL 10110-IGA**

- 5.0 Contractor is responsible for all costs not directly related to the travel except those that have been pre-approved by the County Contract Administrator. These costs include (but not limited to) the following: in-room movies, valet service, valet parking, laundry service, costs associated with storing luggage at a hotel, fuel costs associated with non-County activities, tips that exceed the per diem allowance, health club fees, and entertainment costs. Claims for unauthorized travel expenses will not be honored and are not reimbursable.
- 6.0 Travel and per diem expenses shall be capped at 15% of project price unless otherwise specified in individual contracts

**DELL - (HARDWARE), ONE DELL WAY, ROUND ROCK, TX 78746**

PRICING SHEET: NIGP CODE 2045303

Terms:	NET 30
Vendor Number:	W000002566 X
Telephone Number:	800/981-3355
Fax Number:	866/501-8291
Contact Person:	Stephanie G. Miller
E-mail Address:	<a href="mailto:Stephanie_G_Miller@dell.com">Stephanie_G_Miller@dell.com</a>
Certificates of Insurance	Required
Contract Period:	To cover the period ending <b>December 31, 2013.</b>